

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

September 7, 2023 at 10:30 a.m.

1. [23-90111-E-11](#)

MICHAEL HOFMANN
Brian Haddix

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-7-23 [[128](#)]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Creditor, Debtor, Debtor's Attorney, creditors, and Subchapter V Trustee as stated on the Certificate of Service on August 8 and 9, 2023. The court computes that 29 and 30 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor Rural Community Assistance's failure to pay the required fees in this case: \$188.00 due on July 24, 2023 for Creditor's Motion for Relief from Automatic Stay.

The Order to Show Cause is XXXXXXXXXXXXXXXXXX

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Creditor Rural Community Assistance: \$188.00.

At the hearing, XXXXXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is **xxxxxxxxxxxx**

2. <u>23-90146-E-7</u> <u>UST-1</u>	MARCO ALATORRE ZAMORA AND MIREYA ALATORRE Wilber Salgado	MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B) 7-14-23 [21]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Trustee, parties requesting special notice, and creditors on July 14, 2023. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The United States Trustee, Tracy Hope Davis ("U.S. Trustee"), seeks dismissal of the case under 11 U.S.C. § 707(b)(1) and (b)(3)(B), based on the following grounds stated with particularity (Fed. R. Bank. P. 9013), as summarized by the court (except when the test is set in "quotation marks"), identified by paragraph number used in the Motion:

1. "The Debtors' case should be dismissed under 11 U.S.C. §§ 707(b)(1) and 707(b)(3) because their disposable income is sufficient to pay a meaningful portion of their debts."

Further, that Debtor's monthly income and expenses as stated on Schedules I and J are sufficient to pay all unsecured claims in full in less than 20 month.

2. The Motion is based on:
 - a. The Points and Authorities,
 - b. Exhibits, and
 - c. Everything else filed in this Bankruptcy Case.

The Declaration filed with the Motion states many "grounds" with particularity which are required to be stated with particularity in the motion. Dckt. 24. The same is true for the Points and Authorities, which states with particularity grounds and facts, which must be stated with particularity in the Motion. Dckt. 24.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

In re Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

U.S. Trustee has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by U.S. Trustee are:

- A. The Debtors’ case should be dismissed under 11 U.S.C. §§ 707(b)(1) and 707(b)(3) because their disposable income is sufficient to pay a meaningful portion of their debts.

- B. The Debtors' actual monthly net income, as stated on their Schedule I and Schedule J, is sufficient to pay unsecured claims in full in less than 20 months.
- C. Thus, dismissal is warranted under 11 U.S.C. § 707(b)(3)(B).

Those "grounds" are merely a conclusion of law by U.S. Trustee. Presumably, U.S. Trustee believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

U.S. Trustee is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

- A. Memorandum of Points and Authorities;
- B. Declaration;
- C. Exhibits to the Motion; and
- D. Record in this Case.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that U.S. Trustee believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for U.S. Trustee.

At the hearing, **XXXXXXXXXXXX**

DEBTOR'S OPPOSITION

Debtors Marco Vinicio Alatorre Zamora and Mireya Alatorre ("Debtor") filed an Opposition on August 24, 2023. Dckt. 27. Debtor states:

1. U.S. Trustee has failed to file and provide notice of their Statement of Presumed Abuse, which is required prior to filing a motion to dismiss under 11 U.S.C. § 704(b)(2).
2. Debtor's monthly income throughout the year is less than the period U.S. Trustee reviewed, due to Debtor's lay-off period.
3. U.S. Trustee has not provided facts to support Debtor acted in bad faith.

DISCUSSION

U.S. Trustee's Failure to File Statement Regarding Presumption of Abuse, § 704(b)(1)(A)

Under 11 U.S.C. § 704(b)(1)(A), the United States trustee is required to file a statement within 10 days of the first meeting of creditors that advises the court whether a debtor's case would be presumed abuse under § 707(b). The statement must be filed by the United States trustee in every case. 6 Collier on Bankruptcy P 704.16 (16th 2023).

When reading the plain language of the code, both the statement and the motion to dismiss referred to in § 704(b)(2) relate to the United States trustee's right to bring a motion to dismiss where the presumption of abuse exists, not in cases brought to dismiss under the totality of circumstances. *See also Fokkena v. Draisey (In re Draisey)*, 395 B.R. 79, 82 (B.A.P. 8th Cir. 2008). Therefore, if the United States trustee fails to file the statement on time, they may not seek to dismiss the case based on a presumption of abuse under § 707(b)(2), however, they may still seek dismissal under § 707(b)(3). 6 Collier on Bankruptcy P 704.16 (16th 2023); *See also Fokkena v. Draisey (In re Draisey)*, 395 B.R. 79, 82 (B.A.P. 8th Cir. 2008) ("Filing the § 704(b)(1) statement is a condition precedent to filing a motion to dismiss under § 707(b)(2), not to filing a motion to dismiss under § 707(b)(3)(B).").

Here, the U.S. Trustee seeks to dismiss the case pursuant to 11 U.S.C. §§ 707(b)(1) and (b)(3)(B), not § 704(b)(2). Although the U.S. Trustee was required to file a statement regarding the presumption of abuse and failed to do so, the court does not find that the failure to file the statement precludes the U.S. Trustee from bringing this Motion.

Grounds to Dismiss under 11 U.S.C. §§ 707(b)(1) and (3)

Pursuant to 11 U.S.C. § 707(b)(1), after notice and hearing, the court may dismiss or convert a Chapter 7 case if it finds that granting of relief would be an abuse of the provisions of the chapter. Section 707(b)(2) governs when a court can presume there is an abuse of the provisions of the chapter. Section 707(b)(3), however, governs when there is no presumption of abuse, and rather gives the court discretion to determine whether the petition was filed in bad faith or, under the totality of circumstances, whether debtor's financial situation demonstrates abuse.

Here, U.S. Trustee argues grounds exists under § 707(b)(3) to dismiss the case. In U.S. Trustee's Memorandum of Points and Authorities, Dckt. 25, U.S. Trustee states Debtor's disposable income is \$3,256.24, which would pay off Debtor's scheduled unsecured debt of \$63,351.00 in twenty (20) months. Additionally, U.S. Trustee states that Debtor has demonstrated an ability to pay as debtor Marco Vinicio testified that they are working full time again with their employer of almost twenty (20) years with regular overtime.

Debtor, however, argues that their monthly income fluctuates throughout the year. Opposition, Dckt. 27. Debtor argues their monthly income for 2022 was \$6,568.00, their monthly income for 2021 was \$7,091.74, and their monthly income for 2020 was \$6,797.45. Debtor, curiously, admits if they use their disposable income from 2022, it would take them fifty (50) months to pay off their unsecured claims.

Debtor's Declaration in support of their Opposition states, under penalty of perjury, that their income for this year will be similar to that of 2022, or less. Declaration of debtor Mario Vinicio, Dckt. 28 ¶ 7. Debtor does not indicate why their income for this year will be less than in 2022.

Debtor states they anticipate their disposable income is about \$1,542.00. Declaration, Dckt. 28. This is inconsistent with Debtor's Schedule I/J. Dckt. 1.

Debtor's Schedule I/J, also stated under penalty of perjury, states that as of the date of filing the form, the estimated monthly income is \$8,532.53 while the amount of net income is \$3,256.24. Debtor states, under penalty of perjury, that they do not expect an increase or decrease of their monthly income or monthly expenses within the year after filing the form. Schedules I/J, Dckt. 1. Now, Debtor states they *do* anticipate a decrease in income, due to an anticipated slowdown in debtor Marco Vinicio's work.

The court reminds Debtor and their Counsel that, pursuant to Federal Rules of Bankruptcy Procedure 9011(b), by presenting to the court a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge:

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Failure to comply with the above is grounds for sanctions. Federal Rules of Bankruptcy Procedure 9011(c),

Even if Debtor's Schedules were inaccurate, and Debtor did anticipate a monthly income of only \$6,568.00, and a net income of only \$1,542.00, Debtor's total amount of secured claims total \$15,640.00, while their unsecured claims total roughly \$63,351.00. Schedules D, E/F, Dckt. 1. Thus, Debtor's total debt is roughly \$78,991.00.

Trustees fees and administrative expenses for a Chapter 13 case are roughly 7.2%. Additionally, attorney's fees are roughly \$4,000. If Debtor were to fund a Chapter 13 Plan, based on a 100% plan, Debtor's trustees fees, administrative expenses, and attorney's fees would be an estimated additional \$9,687.35, bringing a total of what would be needed to be paid through the plan of \$88,678.35. To fund a 100% Plan, Debtor's disposable income would need to be roughly \$1,477.97 (\$88,678.35 / 60 months). Debtor's disposable income, even from their 2022 figures at \$1,542.00, appear to be enough to fund a 100% Plan.

At the hearing, **XXXXXXXXXX**

~~—————Based on the foregoing, cause exists to dismiss this case under 11 U.S.C. §§ 707(b)(1) and (3).
The Motion is granted, and the case is dismissed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~—————Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~—————The Motion to Dismiss the Chapter 7 case filed by the United States Trustee, Tracy Hope Davis (“U.S. Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~—————**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice on July 25, 2023. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Dismiss or Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is dismissed.

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Eagle Ledge Foundation, Inc. ("Debtor") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor's failure to expeditiously prosecute the case.
- B. Debtor's failure to provide insurance information reasonably requested by Movant.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 24, 2023. Dckt. 250. Debtor states that:

1. Debtor's failure to expeditiously prosecute the case is excusable because the delay is due to circumstances outside of Debtor's control, such as Debtor's inability to gain possession and control over its real property. Furthermore, once Debtor was able to gain possession and control over its property, it was forced to spend time curing the state of disrepair.
2. Debtor complied with Movant's requests regarding proof of insurance, showing that Debtor had Worker's Compensation and General Liability coverage at all relevant times.

U.S. TRUSTEE'S RESPONSE

U.S. Trustee filed a Response on August 28, 2023. Dckt. 257. U.S. Trustee states and reiterates that:

1. Regardless of any proffered excuses, Debtor has inexcusably failed to expeditiously prosecute its case.
2. Debtor has obtained professional liability insurance coverage through May 25, 2024. Debtor has also obtained property insurance; however, the named insured is TMI Trust Company, not Debtor.
3. Debtor's general liability insurance is only limited to claims arising at the Indiana Avenue Property, and again, the named insured is TMI Trust Company.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[:]; [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Delay of Confirmation

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's disclosure statement and prior plan on October 31, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1112(b)(1). 7 Collier on Bankruptcy ¶ 1112.04 (16th ed. 2023).

Failure to Provide Proof of Insurance

Furthermore, because the record shows that insurance has not been properly maintained on the property, the court finds dismissal to be appropriate. 11 U.S.C. § 1112(b)(4)(C) and (H).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b)(1). The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis, the U.S. Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is granted, and the case is dismissed.

FINAL RULINGS

4. [22-90420-E-7](#)
[BLF-5](#)

ROBERT MERRICK
Gary Fraley

MOTION TO EMPLOY TRANZON ASSET
STRATEGIES AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND
EXPENSES
7-31-23 [\[76\]](#)

Final Ruling: No appearance at the September 7, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2023. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Employ, Sell, and Request for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Employ, Pay Fees, and Sell Property at Auction is granted.</p>

The Chapter 7 Trustee, Gary R. Farrar, ("Trustee") seeks to (1) employ Tranzon Asset Strategies as Auctioneer ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330; (2) allow compensation to Auctioneer; (3) sell by public auction the bankruptcy estate's interest in 72 Bars of Silver ("Property"); and (4) waive the fourteen (14) day stay imposed by Federal Rules of Bankruptcy Procedure 6004(h). Pursuant to Local Bankruptcy Rule 9014-1(d)(5)(iii), these requests for relief may be joined in a single motion.

Employment of Auctioneer

Trustee argues that Auctioneer's appointment and retention is necessary to assist Trustee in liquidating the bankruptcy estate's interest in the Property.

Lonny Papp, Vice President of Tranzon Asset Strategies, testifies that Auctioneer will sell by public auction the Property on their internet auction website. Lonny Papp testifies they and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Tranzon Asset Strategies as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Motion, Declaration, and Auction Agreement. Dckts. 76, 79, and 80.

Allowance of Professional Fees

Fees are requested for the Auction of the Property. Applicant requests fees in the amount of 20% of the gross sale proceeds and costs no greater than \$1,050.00.

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate will include holding an auction for the sale of the Property. The court finds the services will be beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Contingency Fee: Percentage of Sale

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. The Property will be sold by public auction. Lonny Papp, Vice President of Tranzon Asset Strategies, estimates the sale will generate between \$12,550 - \$16,550 of net monies (exclusive of these requested fees and costs) as recovery for Client.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses not to exceed \$1,050.00.

FEES AND COSTS & EXPENSES ALLOWED

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of twenty (20) percent of the gross sale proceeds and reimbursement of costs and expenses no greater than \$1,050.00. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	Twenty (20) percent of the gross sale proceeds from the sale of the Property
Costs and Expenses	Up to \$1,050.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

Approval of Sale of Property

The Bankruptcy Code permits Trustee to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the Property with an estimated value of \$17,000 - \$22,000, generating between \$12,550 - \$16,550 for the estate. The Public Auction will be held in late September, 2023, on Auctioneer's website.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow the Property to be exposed to a large number of prospective purchasers, yielding a greater net return to the Estate than attempting to sell the item through a private sale.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because they do not anticipate any opposition to the Motion and seek to move forward immediately upon entry of the court's order approving the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Chapter 7 Trustee, Gary R. Farrar, ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ, authorize compensation, and to sell property, is granted, and Gary R. Farrar Trustee is authorized to employ Tranzon Asset Strategies ("Auctioneer") as Auctioneer for Trustee on the terms and conditions as set forth in the Name of Agreement filed as Exhibit A, Dckt. 80.

IT IS FURTHER ORDERED that the Trustee is authorized to sell pursuant to 11 U.S.C. § 363(b) the Property commonly known as 72 Bars of Silver ("Property"), on the following terms:

- A. The Property shall be sold by Public Auction around late September on Auctioneer's website.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the Auction.
- C. Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that Tranzon Asset Strategies is allowed the following fees and expenses as a professional of the Estate:

Tranzon Asset Strategies, Professional employed by the Chapter 7 Trustee

Fees in the amount of twenty (20) percent of the gross sale proceeds from the sale of the Property

Expenses in the amount not to exceed an aggregate total of \$1,050.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as the Auctioneer for the Chapter 7 Trustee

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.